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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,451	04/20/2001	David Corts	4232-4002	4838

7590 10/17/2007

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EXAMINER
CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
10/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/839,451	CORTS ET AL.	
	Examiner	Art Unit	
	Donald L. Champagne	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-212* is/are pending in the application.

4a) Of the above claim(s) *32-67 and 130-212* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31 and 68-129* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2 October 2007 has been entered.

Claim Rejections - 35 USC § 102 and 35 USC § 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4, 6-31, 68-74, 76-102 and 104-129 are rejected under 35 U.S.C. 102(e) as being anticipated by Abecassis (US006192340B1).

5. Abecassis teaches (independent claims 1, 29-31, 68, 96-99 and 127-129) a method, apparatus, and computer readable medium encoded with said method, for coordinating transmissions of supplemental digital data transmitted to at least a listener with broadcast data by at least one broadcaster, the method comprising:

receiving schedule information (*Providing a broadcast schedule*, col. 16 lines 40-46) for at least one broadcaster (*a plurality of providers **411-413***, col. 11 lines 1-2, and *one or more Multimedia Players **431** delivering radio-on-demand services*, col. 11 lines 22-30)[1], the schedule information including a broadcast schedule of the broadcast data conducted by the at least one broadcaster at the scheduled time (inherently, since a broadcast schedule is, by definition, "a broadcast schedule of the broadcast data", and is inherently "conducted by the at least one broadcaster at the scheduled time");

identifying, from the received schedule information, the broadcast data to be transmitted (*audio items for downloading*, col. 16 line 42) by the at least one broadcaster;

determining the supplemental digital data (*information*, col. 20 lines 58-61, or col. 21 lines 63-65or col. 17 lines 10-12) to be transmitted to the listener of the broadcast data (any one of the *end users **431-438***, col. 11 lines 1-3) having a digital data receiver (*digital radio-on-demand player*, col. 8 lines 49-51) base on the broadcast data identified at the identifying step (*broadcasted information*, col. 20 line 59 or *musical items*, col. 21 lines 64-65 or *song being played*, col. 17 lines 11-12); and

transmitting at least a portion of the supplemental data to the at least one broadcaster (*the received informational items*, col. 2 line 65 to col. 3 lines 4, where *audio library* is defined at col. 2 lines 36-53) prior to the scheduled time thereby enabling the at least one broadcaster to transmit the supplemental digital data to the listener at the scheduled time in a separate stream from the broadcast data (col. 2 line 62 to col. 3 line 1, where *interleave ... received informational items ... with ... items included in an audio library* reads on "a separate stream", where *interleaving* is explained at col. 21 lines 4-17 *audio library* is defined at col. 2 lines 36-53, and specifically includes *a broadcasted signal*, col. 2 lines 51-53).

6. For independent claims 99 and 127-129, *Multimedia Player **100*** reads on a traffic management system (Fig. 1 and the explanation beginning at col. 5 line 25).

7. Abecassis also teaches at the citations given above claims 8-10, 78-80 and 106-108; claims 14-17, 84-87 and 112-116; claims 19-21 and 117-119; claims 22, 23, 89, 90 120 and 121, where the seller of advertising data is nonfunctional and was accordingly not given patentable weight; and claims 24-28, 91-95 and 122-126.

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[1] Also, from col. 11 lines 3-12: *Participants in the network ... are both providers and end users ...* .

8. Abecassis also teaches claims 2-4, 11-13, 18, 72-74, 81-83, 88, 100-102, 109-111 and 116 (col. 1 lines 34-67); and claims 6, 7, 76, 77, 104 and 105 (col. 11 line 19).

9. Claims 5, 75 and 103 are rejected under 35 U.S.C. 103(a) as being obvious over Abecassis (US005819160A). Abecassis does not teach side band radio broadcasting. This limitation was common at the time of the instant invention. Official notice of this common knowledge or well known in the art statement was taken in the Office action mailed 14 December 2006 (para. 13). This statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

Response to Arguments

10. Applicants' arguments filed with an amendment on 2 October 2007 have been fully considered but they are not persuasive.

11. Applicants argue,

> "In contrast, in the present invention, the timing of events and the user experience is defined by the individual broadcast schedules of each of the broadcasters in the network and the intelligence of the content management system to schedule the supplemental data of the present invention, i.e., users do not get to decide when audio is played and when supplemental data will be delivered. One of the aspects of the present invention dynamically "selects" and "provides" the broadcaster with supplemental data for a real-time broadcast based upon the analysis of the broadcast data identified in the schedule.
>
> As Applicants understand it, Abecassis fails to show or suggests this aspect of invention as discussed above. For example, the broadcast schedule Abecassis is provided to the end-user by the broadcaster and the end-user is participating in the scheduling procedure." (P. 48 bottom.)
>
> "Specifically, the method of claim 1 'receives' schedule information of a broadcaster, and 'identifies' the broadcast data from the schedule information. Once the broadcast data is identified, relevant supplemental digital data are determined according to the broadcast data." (P. 49, bottom para.)

12. The rejection has been revised to accommodate the amendment and better explain how the reference reads on the claims. First, applicants distinguish between "broadcasters" and "users" as actors. This distinction is not claimed, but appears to go to the heart of the instant invention. As was noted in footnote 1 of the last rejection and is repeated in footnote 1 here, the reference anticipates that any given actor or station can be both a broadcaster and a user (col. 11 lines 3-12, *Participants in the network ... are both providers and end users*). Hence the applicants' distinction does not distinguish over the prior art.

13. In Abecassis as well as the instant invention, the timing of events and the user experience is defined by the individual broadcast schedules of each of the broadcasters in the network and the programming (the applicants say "intelligence") of the content management system to schedule the supplemental data. In Abecassis, a broadcast schedule is sent to the Player, which decides, based on user preferences, what broadcast data to download (col. 16 lines 31-46). Based on this broadcast data, the Player determines the supplemental digital data/*information* to be transmitted/downloaded to the broadcast data listener (col. 17 lines 11-12, col. 20 lines 59-61 and col. 21 lines 63-65).

14. Applicants have now claimed transmitting "the supplemental digital data to the listener at the scheduled time in a separate stream from the broadcast data", and the rejection now makes it explicit that that is taught at col. 2 line 62 to col. 3 line 1. To understand this it is necessary to understand that Abecassis' broad definition of *audio library* (col. 2 lines 36-53) includes *a broadcasted signal* (col. 2 lines 51-53, i.e., the *audio library* includes live broadcasts). Applicants argue (p. 50, center) that this teaching means the broadcast and supplemental data are not received (and therefore transmitted) in separate streams/ channels, but the applicants are not correct. The teaching is to receiving *informational items*, which reads on supplemental digital data, and interleaving that with items from the *audio library*, which can be a variety of data including a broadcast signal (col. 2 lines 36-53, especially lines 51-53). *Interleaving* is explained at col. 21 lines 4-17.

Conclusion

15. This is a continuation of applicant's earlier Application No. 09839451. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first

action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717. The fax phone number for all *formal* matters is 571-273-8300.

18. The examiner's supervisor, Eric Stamber, can be reached on 571-272-6724.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

20. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that "disposal or clarification for appeal may be accomplished with only nominal further consideration" (MPEP § 713.09). The burden is on applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues,

or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.

21. Applicant may have after final arguments considered and amendments entered by filing an RCE.

22. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

Donald L. Champagne
Primary Examiner
Art Unit 3622

8 October 2007